

**FILED**

**JUN 05 2019**

Clerk, U.S. District Court  
District Of Montana  
Great Falls

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEVIN GERARD MITCHELL,

Defendant.

CR 07-12-GF-BMM-JTJ

**FINDINGS AND  
RECOMMENDATIONS**

**I. Synopsis**

Defendant Kevin Gerard Mitchell (Mitchell) has been accused of violating the conditions of his supervised release. Mitchell admitted all of the alleged violations, except one. The government proved alleged violation 4. Mitchell's supervised release should be revoked. Mitchell should be placed in custody for 7 months, with 43 months of supervised release to follow. Mitchell should be allowed to file a motion for early termination of supervise release after he has completed 24 consecutive months of supervised release, in full compliance with all of the conditions of supervised release that the Court has imposed upon him.

**II. Status**

Mitchell pleaded guilty to Aggravated Sexual Abuse on March 14, 2007.

(Doc. 18). The Court sentenced Mitchell to 151 months of custody, followed by 5 years of supervised release. (Doc. 26). Mitchell's current term of supervised release began on February 14, 2019. (Doc. 56 at 2).

### **Petition**

The United States Probation Office filed a Petition on May 21, 2019, requesting that the Court revoke Mitchell's supervised release. (Doc. 56). The Petition alleges that Mitchell violated the conditions of his supervised release: 1) by consuming alcohol; 2) by using marijuana; 3) by using methamphetamine; and 4) by failing to complete his sex offender treatment program. (Doc. 56 at 2-3). United States District Judge Brian Morris issued a warrant for Mitchell's arrest on May 21, 2019.

### **Initial appearance**

Mitchell appeared before the undersigned for his initial appearance on June 5, 2019. Mitchell was represented by counsel. Mitchell stated that he had read the petition and that he understood the allegations. Mitchell waived his right to a preliminary hearing. The parties consented to proceed with the revocation hearing before the undersigned.

### **Revocation hearing**

The Court conducted a revocation hearing on June 5, 2019. Mitchell

admitted alleged violations 1, 2 and 3. The government proved alleged violation 4. The violations are serious and warrant revocation of Mitchell's supervised release.

Mitchell's violations are Grade C violations. Mitchell's criminal history category is II. Mitchell's underlying offense is a Class A felony. Mitchell could be incarcerated for up to 60 months. He could be ordered to remain on supervised release for up to 50 months, less any custody time imposed. The United States Sentencing Guidelines call for a term of custody of 4 to 10 months.

### **III. Analysis**

Mitchell's supervised release should be revoked. Mitchell should be incarcerated for 7 months, with 43 months of supervised release to follow. The supervised release conditions imposed previously should be continued. This sentence is sufficient but not greater than necessary.

### **IV. Conclusion**

The Court informed Mitchell that the above sentence would be recommended to Judge Morris. The Court also informed Mitchell of his right to object to these Findings and Recommendations within 14 days of their issuance. The Court explained to Mitchell that Judge Morris would consider a timely objection before making a final determination on whether to revoke his supervised

release and what, if any, sanction to impose.

The Court **FINDS:**

That Kevin Gerard Mitchell violated the conditions of his supervised release: by consuming alcohol; by using marijuana; by using methamphetamine; and by failing to complete his sex offender treatment program.

The Court **RECOMMENDS:**

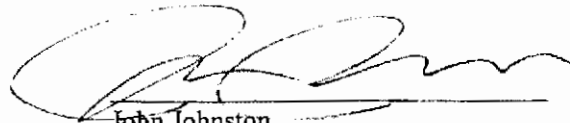
That the District Court revoke Mitchell's supervised release and commit Mitchell to the custody of the United States Bureau of Prisons for a term of imprisonment of 7 months, with 43 months of supervised release to follow. Mitchell should be allowed to file a motion for early termination of supervise release after he has completed 24 consecutive months of supervised release, in full compliance with all of the conditions of supervised release that the Court has imposed upon him.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS AND  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge, and may waive the

right to appear and allocute before a district judge.

DATED this 5th day of June, 2019.



John Johnston  
United States Magistrate Judge